

In Defense of the Space Force: Why the Goldwater-Nichols Act Supports an Independent and Co-Equal Military Branch

S. MATTHEW KRSACOK*

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I. INTRODUCTION

When President Donald J. Trump proposed a “separate, but equal” sixth branch of the United States Armed Forces, the Space Force, his proposal was met with little enthusiasm.¹ Even setting aside the President’s unfortunate use

* Executive Editor, *Ohio State Law Journal*. Thank you to all the *Ohio State Law Journal* editors who have made my law journal experience so rewarding, especially Kaela

of a phrase synonymous with racial segregation, the Space Force conjured images of X-Wings and lightsabers, more so than serious national security policy. Perhaps unsurprisingly, the Space Force was derided across late night television and social media.² Regardless of what science fiction images this proposal inspires, the need for space-based national security is an issue that urgently demands bipartisan attention.

As far back as the year 2001, a Pentagon Commission recognized that “[t]he security and economic well being of the United States . . . depend[s] on the nation’s ability to operate successfully in space.”³ Yet even as satellites and space-dependent technology continue to play an ever more important role in American life, defense experts largely agree that the U.S. military is failing to adequately protect those crucial assets from foreign interference.⁴ With the development of anti-satellite missiles and other sophisticated space weapons by

King and Jessica Van Ranken. Special thanks to Professor Guy A. Rub for his continuous mentorship and guidance throughout my legal education. All errors are my own.

¹ President Donald J. Trump, Remarks at a Meeting with the National Space Council and Signing of Space Policy Directive-3 (June 18, 2018) (transcript available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-meeting-national-space-council-signing-space-policy-directive-3/>); see Mike Rogers, Opinion, *In 2019 Let’s Address the ‘Real Problems’ in National Security Space*, SPACENEWS (Jan. 13, 2019), <https://spacenews.com/in-2019-lets-address-the-real-problems-in-national-security-space/> [<https://perma.cc/KM62-ZYYS>].

² Retired NASA astronaut and commander of Space Shuttle Endeavor Mark Kelly took to Twitter after the Space Force announcement: “This is a dumb idea. The Air Force does this already. That is their job. What’s next, we move submarines to the 7th branch and call it the ‘under-the-sea force?’” Mark Kelly (@ShuttleCDRKelly), TWITTER (June 18, 2018, 8:14 PM), <https://twitter.com/ShuttleCDRKelly/status/1008910946742472707> [<https://perma.cc/H53U-A4UL>]; see also *Late Night Roasts Trump’s Space Force*, CNN (Aug. 10, 2018), <https://www.cnn.com/videos/cnnmoney/2018/08/10/late-night-pence-trump-space-force-orig-gs.cnn> [<https://perma.cc/HN6X-YYB2>] (reporting that late night hosts mocked the establishment of a Space Force).

³ DEP’T OF DEF., REPORT OF THE COMMISSION TO ASSESS UNITED STATES NATIONAL SECURITY SPACE MANAGEMENT AND ORGANIZATION 9 (2001). Also known as the “Rumsfeld Commission” because of its leadership by then-Secretary of Defense Donald Rumsfeld, this commission warned that the United States needed to protect itself against a “Space Pearl Harbor.” *Id.* at viii.

⁴ Nick Stockton, *The 19th Century Argument for a 21st Century Space Force*, WIRED (Sept. 9, 2018) <https://www.wired.com/story/space-force-mahan-argument/> [<https://perma.cc/NA3B-VNKK>] (valuing the commercial space industry at \$350 billion in 2017); John Venable, *A U.S. Space Force: Will It Ever Be Launched?*, NAT’L INT. (Jan. 13, 2019), <https://nationalinterest.org/blog/buzz/us-space-force-will-it-ever-be-launched-41327> [<https://perma.cc/N7HF-6ARH>] (“Banking, commerce, travel, entertainment, the functions of government and our military all depend heavily on our assets in space.”); *id.* (“It is public knowledge that Russian and Chinese militaries now have the capability to put American space assets at risk—and that we haven’t taken steps to protect those systems . . .”).

global rivals like Russia and China,⁵ the necessity of extending the military operations into the final frontier has become a question of “when,” not “if.”⁶ Fortunately, the wheels of power have already begun to turn in Washington that will bring some kind of Space Force into existence. President Trump has signed Space Policy Directive-4, instructing the Pentagon to present legislation that will create an independent Space Force under the control of the Air Force Secretary.⁷

Yet passing such substantial legislation in a divided Congress will be an uphill battle, and the proposal already faces some opposition.⁸ Several other plans have also circulated about where this new branch would best fit within the modern military structure; if President Trump and his allies had their way, the Space Force would be the first military branch created since the Air Force broke out from underneath the U.S. Army in 1947.⁹

But what exactly does that mean? Should the Space Force have its own civilian department under the Department of Defense, achieving parity with the Army, Navy, and Air Force? Or will the Space Force proceed through Congress under its current plan as a service component under another Air Force Department, akin to the Marine Corps and the U.S. Navy’s coexistence under the Naval Department? Alternatively, are the calls for a “separate, but equal” Space Force all bluster, when in fact, it will (and should) amount to something much less? For example, some defense experts and legislators suggest the best version of a Space Force amounts to a mere reorganization of existing space-

⁵ DEP’T OF DEF., FINAL REPORT ON ORGANIZATIONAL AND MANAGEMENT STRUCTURE FOR THE NATIONAL SECURITY SPACE COMPONENTS OF THE DEPARTMENT OF DEFENSE 4 (2018).

⁶ David Deptula, *Space Force: Go Slow, Learn from Army Air Corps*, BREAKING DEF. (June 22, 2018), <https://breakingdefense.com/2018/06/space-force-go-slow-learn-from-army-air-corps/> [<https://perma.cc/GAU3-3S3P>].

⁷ Space Policy Directive-4 of February 19, 2019: Establishment of the United State Space Force, 84 Fed. Reg. 6049 (Feb. 25, 2019) [hereinafter Directive-4]; John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636 (2018); Office of Mgmt. & Budget, Exec. Office of the President, *President Donald J. Trump Is Building the United States Space Force for a 21st Century Military*, WHITE HOUSE (Aug. 9, 2018), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-building-united-states-space-force-21st-century-military/> [<https://perma.cc/4WZQ-EY9F>].

⁸ See, e.g., Marina Koren, *Trump’s Space Force Faces an Uncertain Fate*, ATLANTIC (Nov. 9, 2018), <https://www.theatlantic.com/science/archive/2018/11/space-force-trump-democrats-congress/575359/> [<https://perma.cc/64FV-LF9A>] (“[E]ven before the midterm elections, the Space Force proposal had tepid support among lawmakers, including Republicans.”).

⁹ Jacqueline Klimas, *Trump Going for Full-Blown Space Force, White House Memo Reveals*, POLITICO (Nov. 29, 2018), <https://www.politico.com/story/2018/11/29/space-force-military-branch-999528> [<https://perma.cc/4H7S-CZAL>].

related resources or creation of a warfighting entity like the United States Cyber Command.¹⁰

Management and organization of national defense within civilian government have been ongoing struggles since the beginning of the republic. While the proposal of the Space Force marks the first significant transformation of our military administration in a while, policymakers can look to the lessons of past military reorganization efforts for guidance. Chief among these lessons is the story of the Goldwater-Nichols Department of Defense Reorganization Act of 1986.¹¹ Drafted in response to numerous problems in military preparedness and operational effectiveness, the Goldwater-Nichols Defense Reorganization Act was heralded at the time as “[o]ne of the landmark laws of American history . . . probably the greatest sea change in the history of the American military since the Continental Congress created the Continental Army in 1775.”¹² The Goldwater-Nichols Act fundamentally reshaped the administration of national security and put forth lessons of law and military administration that remain significant to this day.¹³ As such, Goldwater-Nichols can serve as a comprehensive model for the development of a Space Force going forward.

This Note argues the values and lessons embodied in the Goldwater-Nichols Act illuminate the current Space Force proposals and justify the creation of the Space Force as an independent co-equal sixth branch of the United States Armed Forces.¹⁴ In Part II, this Note recounts a brief history of military law and administration in the United States, and examines the factors leading up to the Goldwater-Nichols Defense Reorganization Act, its passage, and the modern military administrative structure created in its wake. Part III evaluates the current proposals for the Space Force, their legal authority, and policy justifications. Part IV looks back to the values and lessons of the Goldwater-Nichols Act and applies them to the different Space Force proposals to argue

¹⁰ See Venable, *supra* note 4; see also Michael O’Hanlon, *There’s No ‘Jungle Force.’ Who Needs a Space Force?*, WALL ST. J. (June 27, 2018), <https://www.wsj.com/articles/theres-no-jungle-force-who-needs-a-space-force-1530139953> [<https://perma.cc/CDJ9-WN9X>].

¹¹ Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. No. 99-433, 100 Stat. 992 (codified as amended in scattered sections of 10 U.S.C.).

¹² GORDON NATHANIEL LEDERMAN, REORGANIZING THE JOINT CHIEFS OF STAFF: THE GOLDWATER-NICHOLS ACT OF 1986 xi (1999) (recounting the statements of Congressman Les Aspin, a chief co-sponsor of the bill in the House of Representatives).

¹³ See *id.*

¹⁴ There are many unanswered legal questions about the legality of weaponizing space, a frontier that is designated as peaceful according to international law, but such a discussion is beyond the scope of this Note. For more in-depth analysis of this topic, see generally Steven Freeland, *Peaceful Purposes? Governing the Military Uses of Outer Space*, 18 EUR. J.L. REFORM 35 (2016); P.J. Blount, *Targeting in Outer Space: Legal Aspects of Operational Military Actions in Space*, HARV. NAT’L SEC. J. (Nov. 25, 2012), <http://harvardnsj.org/2012/11/targeting-in-outer-space-legal-aspects-of-operational-military-action-s-in-space/> [<https://perma.cc/URZ2-HMMY>].

that a “separate, but equal” Space Force with its own civilian department offers the best path forward. Part V briefly concludes.

II. THE GOLDWATER-NICHOLS DEFENSE REORGANIZATION ACT AND THE EMERGENCE OF THE MODERN MILITARY ADMINISTRATIVE STRUCTURE

To understand where the current Space Force proposals fit within the modern military apparatus, it is important to understand the American military structure in existence today and how it was formed under Goldwater-Nichols. This Part begins with a brief overview of the modern military structure and terminology, because colloquial usage of military terms like “branch,” “service,” and “command” often differ widely from their meaning in Title 10 of the United States Code.¹⁵ This Part will first explore the historical precursors to Goldwater-Nichols, including the military operational failures that inspired its passage. Finally, Goldwater-Nichols’s effects on the structure of the Armed Forces will be explored.

A. *The Modern Structure of the United States Armed Forces*

The current modern military structure of the United States Armed Forces comprises five “services”: the Army, Navy, Air Force, Marine Corps, and Coast Guard.¹⁶ A single officer known as a service chief heads each branch: the Army and Air Force have chiefs of staff, the Marine Corps has a commandant, and the Navy has a chief of naval operations.¹⁷ As the highest military officers in their respective services, only other more senior service chiefs and the Chairman and Vice Chairman of the Joint Chiefs of Staff outrank these officers in the overall military command structure.¹⁸

Each service is organized within three civilian military departments: the Department of the Army, Department of the Navy, and the Department of the

¹⁵ See LEDERMAN, *supra* note 12, at xiii (defining military structure and key terminology).

¹⁶ 10 U.S.C. § 101(a)(4) (2012). The Coast Guard occupies a unique role in the U.S. Armed Forces. While it is considered a “branch” of the United States Armed Forces, it operates underneath part of the Department of Homeland Security (as opposed to the Department of Defense), has its own separate statutory code—Title 14 (whereas all other branches are under Title 10), and does not have a formal seat at the table in the Joint Chiefs of Staff. However, in times of war, or at the direction of the President, the Coast Guard can transfer to be beneath the Department of Navy. *The Coast Guard: America’s Oldest Maritime Defenders*, GO-COASTGUARD.COM, <https://www.gocoastguard.com/about-the-coast-guard/learn-the-history> [<https://perma.cc/D7NN-68MZ>]. The United States Merchant Marine resembles a military service, but actually has a statutory support role to the U.S. Armed Forces and is excluded from recognition as part of the Armed Forces, despite multiple suits by Merchant Marine veterans seeking veteran benefits. See *Fogel v. Dep’t of Def.*, 169 F. Supp. 2d 140 (E.D.N.Y. 2001); *Schumacher v. Aldridge*, 665 F. Supp. 41 (D.D.C. 1987).

¹⁷ 10 U.S.C. § 743 (2012).

¹⁸ *Id.*

Air Force.¹⁹ A civilian service secretary heads each department and directs the administration, support, and attendant bureaucracy of their respective branches from the Pentagon.²⁰ Each civilian service secretary, in conjunction with the Department of Defense (DOD), organizes the administrative and mission-essential support functions of each branch, like training and arms procurement.²¹ For example, the Secretary of the Navy has statutory responsibility “to conduct all the affairs of the Department of the Navy, including: recruiting, organizing, supplying, equipping, training, mobilizing, and demobilizing. The Secretary also oversees the construction, outfitting, and repair of naval ships, equipment and facilities.”²² In addition, the civilian secretaries are responsible for formulation and implementation of all national security policies and programs set forth by the President and Secretary of Defense.²³

The three civilian military departments operate within the DOD, which is headed by the Secretary of Defense, with the Office of the Secretary of Defense (OSD) providing staff support to the Defense Secretary.²⁴ The Secretary of Defense answers directly to the President,²⁵ who enjoys constitutionally-vested authority as Commander-in-Chief to direct the military through this military apparatus.²⁶

Within the DOD exists the Joint Chiefs of Staff (JCS), the nation’s top military advisors. The JCS is a seven-member body composed of a Chairman, Vice Chairman, the service chiefs of the Army, Navy, Air Force, Marine Corps, and the Chief of the National Guard Bureau.²⁷ The JCS is supported by the Joint Staff, a body of civilian DOD employees and military officers selected in equal numbers from each service (other than the Coast Guard) by the JCS Chairman.²⁸

¹⁹ The Marine Corps is commonly thought of as an entirely independent branch, but it actually cohabitates with the Navy under the Department of the Navy. *See id.* § 101(a)(8).

²⁰ LEDERMAN, *supra* note 12, at xiii.

²¹ 10 U.S.C. § 191 (2012); *see also id.* §§ 8451–81 (establishing the U.S. Naval Academy in Annapolis, Maryland that trains both Marine and Naval officers); *id.* § 7431 (establishing the U.S. Military Academy in West Point, New York); *id.* § 9431 (establishing the U.S. Air Force Academy). The Secretary of Homeland Security oversees the administration of the Coast Guard Academy. 14 U.S.C. § 1901 (2012).

²² *Secretary of the Navy: Responsibilities*, U.S. NAVY, https://www.navy.mil/navydata/leadership/secnav_respons.asp [https://perma.cc/9FW5-EQ56].

²³ *See id.*

²⁴ 10 U.S.C. § 131(d) (2012).

²⁵ *See id.* § 111. As a nod to the tenet of civilian control of the military, a person cannot be appointed to Secretary of Defense within seven years of relief from active duty from the armed forces. *See id.* § 113.

²⁶ U.S. CONST. art. II, § 2.

²⁷ 10 U.S.C. § 151 (2012).

²⁸ *Id.* § 155 (grouping together the Navy and the Marine Corps for purposes of selecting officers for the Joint Staff).

The President appoints the JCS Chairman with the advice and consent of the Senate to serve as the “principal military advisor” to the President, Secretary of Defense, and the National Security Council.²⁹ Other Joint Chiefs must submit any dissenting advice or opinions on a course of action to the President by submitting them in writing to the Chairman who passes them on to the President.³⁰ In addition to serving as the principal military advisor to the President, the Chairman functions as an overarching strategic decision maker who coordinates high-level joint military readiness and capabilities, develops the country’s overall “National Military Strategy,” and promulgates national military Risk Assessments, among other duties.³¹

While the Chairman is the highest-ranking military officer in the Armed Forces, he or she does not actually exercise any military *operational* authority as many traditionally think of military power.³² Coordination of boots-on-the-ground combat operations falls to the Combatant Commanders (CCDRs).³³ Combatant Commanders are four-star generals or admirals who lead Combat Commands (COCOMs) comprised of troops assigned to them from across the different branches by the Secretary of Defense.³⁴ The JCS Chairman has oversight over the CCDRs and communicates on their behalf to the President but possesses no actual direct military operational control.³⁵ Instead, authority flows directly from the President to the CCDRs through the Secretary of Defense.³⁶

Combatant commands exist as “unified commands” for completion of broader missions or “specified commands” for more specific functional missions.³⁷ Until the recent elevation of U.S. Space Command,³⁸ there were ten Unified Combatant Commands: four that are divided into specific commands based on “functional” responsibilities and six unified commands based on “geographic” responsibilities.³⁹ The most recent Unified Combatant Command

²⁹ *Id.* §§ 151–52.

³⁰ *Id.* § 151(d).

³¹ *Id.* § 153.

³² *See id.* § 152(c).

³³ 10 U.S.C. § 164 (2012).

³⁴ *Id.* § 161; ANDREW FEICKERT, CONG. RESEARCH SERV., R42077, THE UNIFIED COMMAND PLAN AND COMBATANT COMMANDS: BACKGROUND AND ISSUES FOR CONGRESS 13 (2013). For more information on military rank structure, see generally *U.S. Military Rank Insignia*, U.S. DEP’T OF DEF., <https://defense.gov/Our-Story/Insignias/#enlisted-insignias> [<https://perma.cc/H5X4-YZHX>].

³⁵ 10 U.S.C. § 163 (2012).

³⁶ *Id.* §§ 162(b), 163.

³⁷ CHARLES NEMFAKOS ET AL., RAND NAT’L DEF. RESEARCH INST., THE PERFECT STORM: THE GOLDWATER-NICHOLS ACT AND ITS EFFECT ON NAVY ACQUISITION 14 n.6 (2010).

³⁸ *See infra* Part III.B.2.

³⁹ Dan Maurer, *Fiduciary Duty, Honor, Country: Legislating a Theory of Agency into Strategic Civil-Military Relations*, 10 HARV. NAT’L SEC. J. 259, 300 n.193 (2019). Specified commands organized around their functional responsibilities include: U.S. Strategic

created was U.S. Cyber Command.⁴⁰ These combatant commands are composed of and led by officers of multiple different branches with the authority to execute warfighting missions and wield actual military force.⁴¹

B. *Military Organizational Failures Leading up to Goldwater-Nichols*

Despite historical military success, American military organization has not always served as a model of coherence and careful planning. In fact, prior to the enactment of Goldwater-Nichols, the military command structures were rigid, parallel chains of command that were often cumbersome, especially when attempting to undertake joint operations.⁴² Goldwater-Nichols was foundational in alleviating these organizational problems.⁴³

The problems resulting from coordination failures and inter-branch rivalry were obvious from the beginning of the modern military. At the start of World War II, significant organizational problems abounded despite the existence of just two military services: the Army and Navy.⁴⁴ While President Franklin D. Roosevelt had organized an informal committee of U.S. service chiefs and high-ranking officers to advise on the war effort, disputes between the military branches and resulting strategic failures revealed this informal structure to be woefully inadequate.⁴⁵ Distrust between the two service branches led to internal power struggles, strategic disagreements, and general disorganization that directly harmed the U.S. war effort in the Pacific theatre.⁴⁶

Command (USSTRATCOM), U.S. Special Operations Command (USSOCOM), U.S. Transportation Command (USTRANSCOM), and U.S. Cyber Command (USCYBERCOM), while unified geographic commands include U.S. Pacific Command (USPACOM), U.S. European Command (USEUCOM), U.S. Central Command (USCENTCOM), U.S. Southern Command (USSOUTHCOM), U.S. Northern Command (USNORTHCOM), and U.S. Africa Command (USAFRICOM). *Id.*; see also *Combatant Commands*, U.S. DEP'T OF DEF., <https://www.defense.gov/Our-Story/Combatant-Commands> [<https://perma.cc/HF4L-EFX8>].

⁴⁰ 10 U.S.C. § 167b (2012); Memorandum on Elevation of U.S. Cyber Command to a Unified Combatant Command, 82 Fed. Reg. 39,953 (Aug. 23, 2017).

⁴¹ See *id.* § 164(c).

⁴² JAMES R. LOCHER III, *VICTORY ON THE POTOMAC: THE GOLDWATER-NICHOLS ACT UNIFIES THE PENTAGON* 198 (Joseph G. Dawson et al. eds., 2002).

⁴³ See KATHLEEN J. MCINNIS, CONG. RESEARCH SERV., R44474, *GOLDWATER-NICHOLS AT 30: DEFENSE REFORM AND ISSUES FOR CONGRESS 1* (2016) [hereinafter *GOLDWATER-NICHOLS CRS REPORT*].

⁴⁴ LEDERMAN, *supra* note 12, at 8; LOCHER, *supra* note 42, at 198.

⁴⁵ See LEDERMAN, *supra* note 12, at 10–13.

⁴⁶ *Id.* at 11, 13 (“The disaster at Pearl Harbor resulted in part from a failure of coordination among the Army and Navy commanders in Hawaii . . .”); LOCHER, *supra* note 42, at 20–21 (quoting British Air Marshal Sir John Slessor, who explained that “[t]he violence of interservice rivalry in the United States had to be seen to be believed and was an appreciable handicap to their war effort”).

Recognizing the fault lines in military administration that World War II exposed, Congress passed the groundbreaking National Security Act of 1947.⁴⁷ This created the National Military Establishment (a precursor to the DOD) helmed by the Secretary of Defense, the Air Force (which had previously served under the Army as the U.S. Army Air Corps), the Central Intelligence Agency (CIA), and the National Security Council (NSC).⁴⁸ The Act formally authorized a three-member Joint Chiefs of Staff (JCS) on equal footing, as the “principal military advisors” to the President, composed of the Army, Navy, and Air Force service chiefs.⁴⁹

Yet even this reorganization and subsequent efforts to expand the role of the JCS failed to yield the organizational benefits for which Congress had hoped.⁵⁰ Each service still failed to work efficiently together, reporting directly up the ladder to their respective service chief without any overlap or significant coordination efforts.⁵¹ Moreover, “dual-hatting” of JCS service chiefs led to a type of “service parochialism” and created inherent conflicts of interest. As service chiefs, duty required jockeying for resources and acclaim for their respective branch, but as JCS members, a duty existed to provide even-handed military advice to the President from the perspective of the entire Armed Forces.⁵² Oftentimes, these goals conflicted to the detriment of sound military advice to the President.⁵³

Inter-service squabbling deepened the rift between the branches and wreaked havoc on the American military beyond just wartime. During peacetime, the procurement of military resources and development of warfighting strategy were tailored in isolation.⁵⁴ These issues ballooned defense spending through duplicative purchases and hindered operational readiness.⁵⁵

⁴⁷ William George Eckhardt, *Lawyering for Uncle Sam When He Draws His Sword*, 4 CHI. J. INT’L L. 431, 438 (2003).

⁴⁸ OFFICE OF THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF, ORGANIZATIONAL DEVELOPMENT OF THE JOINT CHIEFS OF STAFF: 1942–2013 16–19 (2013); LEDERMAN, *supra* note 12, at 16.

⁴⁹ LEDERMAN, *supra* note 12, at 16–17.

⁵⁰ OFFICE OF THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF, *supra* note 48, at 18–35 (describing notable interim military reorganization efforts like the Key West Agreement of 1948, the National Security Act Amendments of 1949, Reorganization Plan No. 6 of 1953, and the Defense Reorganization Act of 1958).

⁵¹ See GOLDWATER-NICHOLS CRS REPORT, *supra* note 43, at 2; OFFICE OF THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF, *supra* note 48, at 37–38.

⁵² GOLDWATER-NICHOLS CRS REPORT, *supra* note 43, at 7. However, defense reform opponents at the time disputed this characterization in their campaign to oppose JCS reorganization. See LOCHER, *supra* note 42, at 100–01 (quoting then-Secretary of Defense Caspar Weinberger, who said: “Assignment of dual responsibilities to the chiefs is not a problem if the individuals are carefully chosen. There is no evidence, with the current group of chiefs, that a conflict exists between their service and joint roles.”).

⁵³ GOLDWATER-NICHOLS CRS REPORT, *supra* note 43, at 7.

⁵⁴ See NEMFAKOS ET AL., *supra* note 37, at 11–12.

⁵⁵ See *id.*

Rampant fraud, waste, and abuse in the military procurement system angered government officials and the public alike.⁵⁶

The experience of defeat in the Vietnam War was yet another powerful impetus to reconsider the existing military administrative structure.⁵⁷ In Vietnam, failures at joint operations were acute; President Kennedy became so frustrated by the conflicting advice on operations in Laos that he soon began to only invite the JCS Chairman to strategy meetings.⁵⁸ Air Force General David Jones, who served as Chairman of the Joint Chiefs from 1978 to 1982, described the Vietnam War as “our worst example of confused objectives and unclear responsibilities in Washington and in the field. Each service, instead of integrating efforts with the others, considered Vietnam its own war and sought to carve out a large mission for itself.”⁵⁹

However, it was a series of operational failures in the early 1980s that truly showed the organizational and structural cracks in the military administrative state that would lead to the passage of the Goldwater-Nichols Act.⁶⁰ Desert One, the operations in Grenada, and the Marine barracks bombing in Beirut, Lebanon, all underscored how the ineffective, rigid command structure in existence was failing the military on the battlefield.⁶¹ For example, troops in Desert One (otherwise known as the Iranian Hostage Rescue) failed in their attempt to carry out the sophisticated hostage rescue in part because they quite literally met for the first time on the day of the operation.⁶² American troops conducting joint operations in Grenada were using tourist maps to fight given the lack of intelligence and strategic sharing between services.⁶³ U.S. Army helicopters in Grenada were prevented from airlifting wounded soldiers to the aircraft carrier USS Independence because the Navy had never cleared Army helicopters to land on its ships.⁶⁴

Inspired by egregious examples of military dysfunction, Ronald Reagan campaigned on cleaning up the perceived disarray in the Pentagon and

⁵⁶ *Id.* at 9–10; LOCHER, *supra* note 42, at 284–85 (describing reactions to media reports of Air Force overspending, including \$7,622 on a coffee pot, \$74,000 on an aluminum folding ladder, \$13,000 for a crew chief seat for the C-5A cargo plane, and \$640 per toilet seat for the P-3C aircraft). The \$640 toilet seat became emblematic of Pentagon waste and excess. *See id.* at 291 (reproducing 1985 *Washington Post* cartoon depicting the Secretary of Defense wearing a toilet seat around his neck with a \$640 price tag).

⁵⁷ Ike Skelton, *Joint and Combined Operations in the Post-Cold War Era*, 73 MIL. REV. 2, 11 (1993) (“The bitter experience of Vietnam . . . sent American military men back to the study of war and military history.”); *see also* LOCHER, *supra* note 42, at 29–30.

⁵⁸ LEDERMAN, *supra* note 12, at 58.

⁵⁹ Ronald H. Cole, *Grenada, Panama, and Haiti: Joint Operational Reform*, 20 JOINT FORCE Q., 57, 57 (1998).

⁶⁰ GOLDWATER-NICHOLS CRS REPORT, *supra* note 43, at 2–3.

⁶¹ *Id.* at 3.

⁶² *Id.*

⁶³ *Id.* at 4.

⁶⁴ LEDERMAN, *supra* note 12, at 67.

revitalizing the military.⁶⁵ In 1985, Reagan set up the President's Blue Ribbon Commission on Defense Management helmed by former Secretary of Defense (and Hewlett-Packard CEO) David Packard.⁶⁶ The Packard Commission had a broad mandate to examine the DOD; however, its primary focus was to study defense procurement in order to streamline the process and root out inefficiency.⁶⁷

Many observers saw the efficiency-oriented reforms proposed by the Packard Commission and President Reagan as insufficient to address the deeply-rooted structural problems hampering military readiness.⁶⁸ The House and Senate Armed Services Committees took up the call to action, conducting independent reviews and making a series of proposals that culminated in an act co-sponsored by Republican Senator Barry Goldwater of Arizona and Democratic Representative William Flynt "Bill" Nichols of Alabama.⁶⁹ Despite heavy resistance from the Pentagon and service chiefs,⁷⁰ the initiative passed overwhelmingly: 383–27 in the House and 95–0 in the Senate.⁷¹ President Reagan signed the Act on October 1, 1986.⁷²

C. Effect of the Goldwater-Nichols Act

In setting up the modern military administrative structure,⁷³ the Goldwater-Nichols Act sought to remedy the failures of the old military regime and embody certain value judgments about military administrative efficiency. By its own stated purposes, Goldwater-Nichols sought to improve clear lines of communication and advice to the President, the formulation of strategy, and effective use of military resources.⁷⁴

Goldwater-Nichols drastically improved inter-service relationships and the overall management of joint operations by putting an end to the service chiefs' "dual-hatting" role.⁷⁵ Previously a source of conflict, Goldwater-Nichols clarified that service secretaries were firmly subject to the authority of the Secretary of Defense, a fact left ambiguous by the National Security Act of 1947.⁷⁶ After Goldwater-Nichols, the service chiefs' and the service secretaries'

⁶⁵ LOCHER, *supra* note 42, at 31, 293, 298 (discussing Reagan administration responses to Pentagon failures).

⁶⁶ GOLDWATER-NICHOLS CRS REPORT, *supra* note 43, at 2.

⁶⁷ *Id.* at 2–3.

⁶⁸ *Id.* at 6.

⁶⁹ LEDERMAN, *supra* note 12, at 68–76 (describing the legislative process of the Goldwater-Nichols Act).

⁷⁰ *See infra* Part IV.C.

⁷¹ NEMFAKOS ET AL., *supra* note 37, at 14.

⁷² OFFICE OF THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF, *supra* note 48, at 62.

⁷³ *See supra* Part II.A.

⁷⁴ Goldwater-Nichols Department of Defense Reorganization Act of 1986, *supra* note 11, at pmbl.

⁷⁵ GOLDWATER-NICHOLS CRS REPORT, *supra* note 43, at 7.

⁷⁶ LOCHER, *supra* note 42, at 438–39.

primary responsibility was “hotel[ing]” functions instead of providing combat advice on behalf of their respective branches.⁷⁷ In other words, the service chiefs were tasked with “training and equipping” the branches, while the Combatant Commanders directed the actual warfighting functions.⁷⁸ Without direct involvement in operational planning, the service chiefs and service secretaries could focus exclusively on improving “force providers” by overseeing critical military training and acquisition processes.⁷⁹

In addition, Goldwater-Nichols mandated enhanced training requirements suitable for the new reality of warfighting via joint Combatant Commands. Combat Commanders suddenly led diverse forces made up of troops from across the different service branches.⁸⁰ Goldwater-Nichols sought to foster a culture of mutual respect and cooperation between the branches within the officer corps.⁸¹ For example, Goldwater-Nichols required all officers to possess joint operations experience and complete a joint operations “capstone course” before serving in any top military position.⁸²

In the past, the JCS had been a battleground for inter-branch disputes and conflicting advice rooted in self-interested “service parochialism.”⁸³ To end these squabbles, Goldwater-Nichols simplified the chain of command by eliminating the JCS members’ status as co-equal “principal military advisors.”⁸⁴ Instead, Goldwater-Nichols elevated the JCS Chairman above the rest of the JCS to speak with a sole unified voice as the “principal military advisor” to the President, Secretary of Defense, and National Security Council.⁸⁵ The Chairman could speak directly on behalf of the Combatant Commanders without struggling with the other service chiefs to produce a consensus opinion tailored to the lowest common denominator.⁸⁶ Similarly, Goldwater-Nichols placed the Combatant Commanders directly beneath the authority of the Secretary of Defense and the President, increasing their importance and mitigating conflicts of interest with the JCS’s role as overall military strategists.⁸⁷

The reorganization of the military under Goldwater-Nichols was considered instrumental in the success of immediately subsequent U.S. military operations

⁷⁷ Eckhardt, *supra* note 47, at 438.

⁷⁸ *Id.*

⁷⁹ Maurer, *supra* note 39, at 300; NEMFAKOS ET AL., *supra* note 37, at 15.

⁸⁰ 10 U.S.C. § 164(c) (2012).

⁸¹ See NEMFAKOS ET AL., *supra* note 37, at 15.

⁸² Maurer, *supra* note 39, at 301.

⁸³ See *supra* Part II.B.

⁸⁴ NEMFAKOS ET AL., *supra* note 37, at 14.

⁸⁵ 10 U.S.C. § 151(b) (2012).

⁸⁶ Maurer, *supra* note 39, at 300. See also LOCHER, *supra* note 42, at 20, 440 (“Consisting of four equals—two generals and two admirals—the JCS was unable to reach a decision except by unanimous agreement. On many occasions, ‘decision by the Joint Chiefs proved to be impossible.’”).

⁸⁷ LOCHER, *supra* note 42, at 440; Maurer, *supra* note 39, at 300; NEMFAKOS ET AL., *supra* note 37, at 14.

like Desert Storm.⁸⁸ The Act “rescue[d] the JCS from its own limitations and failures”; it reduced inefficiencies, allowed the military establishment to operate effectively as a cohesive unit, and supplied civilian authorities with overall superior military advice.⁸⁹ Goldwater-Nichols marked a resounding success in the civil administration of military power as well: then-Defense Secretary Richard B. Cheney remarked that, “Goldwater-Nichols helped pull [the Department of Defense] together in a coherent fashion so that it functions much better . . . than it ever did before.”⁹⁰ With minor exceptions, the military structure created by Goldwater-Nichols remains unchanged since 1986.⁹¹

Despite wide acclaim, the thirtieth anniversary of the historic legislation in 2016 was an occasion marked by some calls to consider updating it.⁹² While praising its “many positive benefits,” then-Defense Secretary Ash Carter went on record to say that the “pendulum between service equities and jointness may have swung too far” and called for the consideration of “practical updates to this critical organizational framework, while still preserving [Goldwater-Nichols’s] spirit and intent.”⁹³ However, there has been “little consensus regarding what changes are needed within DOD and what specific direction reform ought to take.”⁹⁴ While calls for reform should not be entirely dismissed, the noted lack

⁸⁸ GOLDWATER-NICHOLS CRS REPORT, *supra* note 43, at 9 (citing then-Chairman of the JCS Colin Powell, who said, “You will notice in Desert Storm nobody is accusing us of logrolling and service parochialism and the Army fighting the Air Force and the Navy fighting the Marine Corps. We are now a team. The Goldwater-Nichols legislation helped that.”).

⁸⁹ See Maurer, *supra* note 39, at 299.

⁹⁰ LOCHER, *supra* note 42, at 439.

⁹¹ OFFICE OF THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF, *supra* note 48, at 79–85 (discussing the 2008 statutory elevation of the Chief of the National Guard Bureau to JCS membership and the 2010 disestablishment of Joint Forces Command).

⁹² *Goldwater-Nichols Reform: The Way Ahead: Hearing Before the H. Armed Servs. Comm.*, 114th Cong. 1–2, 6–7 (2016) (statements of Rep. William M. “Mac” Thornberry, Chairman, H. Comm. on Armed Servs., and Dr. Dov Zakheim, Senior Fellow, Center for Naval Analyses) (calling Goldwater-Nichols “tremendously successful,” but arguing the Pentagon was “too top heavy” with too many Combatant Commands and “bloated” with attendant bureaucracy; and calling for reform to reduce bureaucracy, add greater flexibility in moving around DOD assets, and increase clarity in the chain of command, since the then-current regime was built for the Cold War and not suited for modern threats); see also Maurer, *supra* note 39, at 303 (advocating for an amendment to Goldwater-Nichols to create a “jurisprudential agency” relationship between Congress and senior military leaders).

⁹³ Lisa Ferdinando, *Carter Proposes Updates to Goldwater-Nichols Act*, PACOM NEWS (Apr. 5, 2016), <http://www.pacom.mil/Media/News/Article/715090/carter-proposes-updates-to-goldwater-nichols-act/> [<https://perma.cc/ZVT4-8EZZ>].

⁹⁴ GOLDWATER-NICHOLS CRS REPORT, *supra* note 43, at 1. Given the vast disparity in complaints, one former senior official compared calls for Goldwater-Nichols reform to a “Rorschach test” for projecting whatever grievances one has about the Pentagon into their calls for Goldwater-Nichols reform. *Id.* at 2.

of consensus around a unified direction for Goldwater-Nichols reform gives further credence to the Act's enduring ideals.⁹⁵

III. THE SPACE FORCE PROPOSALS AND THEIR CONSTITUTIONAL AUTHORITY

Defense industry experts, policy makers, and interested members of the public have been abuzz about the possibility of a Space Force since President Trump first announced his intention to create a “separate, but equal” sixth branch of the Armed Forces in June 2018.⁹⁶ In February 2019, President Trump signed Space Policy Directive-4, instructing the Pentagon to draft legislation creating the Space Force, although the presumptive Space Force proposal looks more like a “Space Corps.”⁹⁷ Pending approval by Congress, the proposed plan calls for the Space Force to operate under the authority of the Air Force, akin to the relationship between the Marine Corps and the Naval Secretary.⁹⁸ Perhaps bowing to political pressure, Space Policy Directive-4 represents a significant backpedal from the Trump Administration's original call for a Space Force to be a true co-equal branch governed by its own civilian department.⁹⁹

Despite this compromise, the Space Force faces a difficult path through Congress and passage into law.¹⁰⁰ The Congressional Research Service has

⁹⁵ Many commenters have pointed out the lack of unification of reform ideas. See, e.g., Justin T. Johnson, *2017 NDAA: Define the Goldwater-Nichols Problem Before Trying to Solve It*, HERITAGE FOUND. (July 12, 2016), <https://www.heritage.org/defense/report/2017-ndaa-define-the-goldwater-nichols-problem-trying-solve-it> [<https://perma.cc/Z9QU-H6GK>]; Mark Cancian, *We Need a Map for Goldwater-Nichols Reform so We Don't Get Lost*, WAR ON THE ROCKS (Mar. 17, 2016), <https://warontherocks.com/2016/03/we-need-a-map-for-goldwater-nichols-reform-so-we-dont-get-lost/> [<https://perma.cc/37NJ-5R5P>].

⁹⁶ Trump, *supra* note 1; see also Office of Mgmt. & Budget, Exec. Office of the President, *President Donald J. Trump Is Launching America's Space Force*, WHITE HOUSE (Oct. 23, 2018), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-launching-americas-space-force/> [<https://perma.cc/5U4P-46C2>]; see, e.g., James F. Naughton Jr., *President Trump's Space Force? Lawmakers Set Reactions to Stun*, MOAA (Apr. 10, 2018), <https://www.moaa.org/content/take-action/top-issues/currently-serving/President-Trump-s-Space-Force--Lawmakers-Set-Reactions-to-Stun/> [<https://perma.cc/22G7-Z4VY>] (documenting the varied reactions of U.S. lawmakers and Pentagon officials).

⁹⁷ Directive-4, *supra* note 7; see also Jacqueline Klimas, *Trump to Approve Lean Space Force*, POLITICO (Feb. 18, 2019), <https://www.politico.com/story/2019/02/18/trump-space-force-1182572> [<https://perma.cc/4PU9-G94U>].

⁹⁸ Directive-4, *supra* note 7.

⁹⁹ Bryan Bender & Connor O'Brien, *Leaner Space Force Woos Skeptics in Congress*, POLITICO (Feb. 3, 2019), <https://www.politico.com/story/2019/02/03/trump-space-force-pentagon-1132106> [<https://perma.cc/V6P4-FSV6>].

¹⁰⁰ See, e.g., Julia Manchester, *Dem Pollster: 'Absurd' to Think Congress Will Approve 'Space Force'*, HILL (Aug. 21, 2018), <https://thehill.com/hilltv/what-americas-thinking/402885-dem-pollster-its-absurd-to-think-space-force-will-get> [<https://perma.cc/402885-dem-pollster-its-absurd-to-think-space-force-will-get>].

speculated four possible forms the Space Force could ultimately take: (1) consolidation of existing DOD space-related assets, (2) reorganization of existing space-related assets into a Unified Combatant Command, (3) creation of a “separate branch” within the Air Force Department (embodied by Space Policy Directive-4), or (4) creation of a co-equal independent branch with a civilian military department.¹⁰¹

These proposals fall into two categories: those achievable by Executive power alone and those that would require Congressional approval. Thus, a brief explanation of Congressional and Executive power over military affairs is in order. This Part will then detail what is known about Space Policy Directive-4 and the different alternative proposals that have been considered (and in some cases, already implemented) in furtherance of creating a Space Force. Against this backdrop, Part IV will then argue that the “Space Force” model consisting of a separate co-equal branch with its own civilian department embodies the best option forward for a space-based military structure.

A. How to Create a Space Force

Article II of the Constitution directly endows the President with military powers as Commander in Chief,¹⁰² however the exact extent of that power has been a continuing source of scholarly and political debate.¹⁰³ The seminal Supreme Court case *Youngstown v. Sawyer* recognized some implicit presidential power to act in the national security context, however that power is limited by Congress’s express or implicit approval of such an act.¹⁰⁴

However, while the Constitution does vest the President with significant discretion to direct the military war “protective” powers to respond to threats,¹⁰⁵ primary control over peacetime military affairs likely belongs to Congress.¹⁰⁶ Deeply distrustful of a standing army and a tyrannical Chief Executive, the Founding Fathers chose to vest the elected civilian legislature with oversight of

ma.cc/E5A5-Q2DQ] (“[S]enators from both sides of the political aisle have expressed skepticism.”).

¹⁰¹ See STEVEN A. HILDRETH ET AL., CONG. RESEARCH SERV., IF10950, TOWARD THE CREATION OF A U.S. “SPACE FORCE” 1 (2018).

¹⁰² U.S. CONST. art. II, § 2 (“The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States . . .”).

¹⁰³ See, e.g., Neil Kinkopf, *The Statutory Commander in Chief*, 81 IND. L.J. 1169, 1170–71 (2006).

¹⁰⁴ See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 643–45 (1952) (Jackson, J., concurring).

¹⁰⁵ See Kinkopf, *supra* note 103, at 1172 (citing Henry P. Monaghan, *The Protective Power of the Presidency*, 93 COLUM. L. REV. 1 (1993)).

¹⁰⁶ See Charles J. Dunlap Jr., *Welcome to the Junta: The Erosion of Civilian Control of the U.S. Military*, 29 WAKE FOREST L. REV. 341, 344 n.15 (1994).

the Armed Forces and national security.¹⁰⁷ Accordingly, Congress possesses near-plenary powers to regulate national security under Article I, Section 8.¹⁰⁸ In addition to exercising its authority over defense spending,¹⁰⁹ Congress exercises substantial oversight over the military through the House and Senate Armed Services Committees.¹¹⁰

While a unilateral executive attempt to create a separate sixth branch is not beyond comprehension of a *Youngstown*-style analysis,¹¹¹ even Vice President Pence and the DOD have conceded that reorganization of the scope and scale envisioned by creation of a Space Force as a sixth branch could not be achieved through executive power alone.¹¹² Textually, the establishment of a new branch sits squarely within Congress's authority "[t]o make Rules for the Government and Regulation of land and naval Forces" or power to "raise and support

¹⁰⁷ *Id.*; see also Dakota S. Rudesill, *The Land and Naval Forces Clause*, 86 U. CIN. L. REV. 391, 419 (2018).

¹⁰⁸ U.S. CONST. art. I, § 8, cl. 10–13, 15–16; Rudesill, *supra* note 107, at 408 (listing the Define and Punish, Declare War, Captures, Marque and Reprisal, Army, Navy, and Militia Clauses).

¹⁰⁹ U.S. CONST. art. I, § 8, cl. 12 ("The Congress shall have Power . . . [t]o raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years.").

¹¹⁰ See S. COMM. ON RULES & ADMIN., STANDING RULES OF THE SENATE, S. DOC. NO. 113-18, at 19–20 (2013) (Rule XXV, 1(c)(1)); RULES OF THE HOUSE OF REPRESENTATIVES, R. X.1(c), R. X.3(b), H. Doc. No. 115-177, at 6, 9 (2015).

¹¹¹ See *Youngstown Sheet & Tube Co.*, 343 U.S. 579, 643–44 (1952) (Jackson, J., concurring).

¹¹² Rebecca Kheel, *Senate Emerges as Obstacle to Trump's 'Space Force,'* HILL (Aug. 21, 2018), <https://thehill.com/policy/defense/402748-senate-emerges-as-obstacle-to-trumps-space-force> [<https://perma.cc/FSZ3-KKE5>]; see DEP'T OF DEF., *supra* note 5, at 6.

Armies.”¹¹³ As such, it has been generally accepted by experts¹¹⁴ that to create a Space Force as a separate service or independent branch, Congress would have to act legislatively to amend Title 10, as it did with the creation of the Marines¹¹⁵ and the Air Force.¹¹⁶

With that said, not all purely executive options are off the table. Title 10 offers the President some latitude to establish space-based national defense initiatives through purely executive powers.¹¹⁷ The President has already undertaken some such executive measures in the name of “interim steps” towards a Space Force.¹¹⁸ However, Congress could ultimately thwart the Space Force, or keep any executive option from achieving a more permanent status through its legislative prerogatives and tight control over national security

¹¹³ U.S. CONST. art. I, § 8, cl. 12, 14. However, relying on similar arguments that have been used to question the legitimacy of an Air Force, a few legal scholars argue that a literal textual reading of Article I, Section 8 gives Congress only power over “land and naval forces” and would bar the creation of an Air Force, let alone a Space Force. Of course, a constitutional prohibition would be unlikely, given that space-based components are already constitutionally in use by the different Armed Forces branches; it is unlikely that moving them to an independent branch would render them unconstitutional. Moreover, Congress’s plenary power to regulate the Armed Forces has never been seriously challenged. Despite these powerful arguments, at least one legal scholar has maintained that the Space Force could be too far afield of what the Framers intended when authorizing federal government powers and requires a constitutional amendment to establish a Space Force. *See, e.g.,* Michael Dorf, *Originalists in Space*, DORF ON LAW (Aug. 15, 2018), <http://www.dorfonlaw.org/2018/08/originalists-in-space.html> [https://perma.cc/UMR5-ZM35]; Michael Ramsey, *Is the Space Force Constitutional?*, ORIGINALISM BLOG (Aug. 20, 2018), <https://originalismblog.typepad.com/the-originalism-blog/2018/08/is-the-space-force-constitutionalmichael-ramsey.html> [https://perma.cc/LQX5-3HDA]; Scott Bomboy, *The Space Force and the Constitution*, NAT’L CONST. CTR.: CONST. DAILY (Aug. 22, 2018), <https://constitutioncenter.org/blog/the-space-force-and-the-constitution> [https://perma.cc/Q2R3-D7QR]; *see also* HILDRETH ET AL., *supra* note 101, at 2.

¹¹⁴ *E.g.,* Valerie Insinna & Aaron Mehta, *Trump Orders Creation of Independent Space Force—But Congress Will Still Have Its Say*, DEFENSENEWS (June 18, 2018), <https://www.defensenews.com/space/2018/06/18/trump-orders-creation-of-independent-space-force/> [https://perma.cc/GS4A-F57K] (“[E]xperts—and a powerful member of Congress—believe Trump still needs the support of Congress to make a space force happen.”); Koren, *supra* note 8 (“The Trump administration cannot establish the Space Force on its own. It needs Congress.”).

¹¹⁵ *See The Origins of the Marine Corps*, MILITARY.COM, <https://www.military.com/military-appreciation-month/origins-of-marine-corps-day.html> [https://perma.cc/SU2L-KZW6].

¹¹⁶ Eckhardt, *supra* note 47, at 438; HILDRETH ET AL., *supra* note 101, at 2.

¹¹⁷ By virtue of its status as an executive department, the President has the power to direct the DOD, the Secretary of Defense, and the service secretaries within the DOD. *See* 10 U.S.C. §§ 111, 113 (2012). The President can establish offices, agencies, activities, or commands within the DOD, as long as the President notifies Congress within 60 days. *Id.* § 111(c). The President also has more explicit delegated statutory power within Title 10, like the power to direct the creation of combatant commands. *See, e.g., id.* § 1641(a).

¹¹⁸ *See infra* Parts III.B.1 & III.B.2.

appropriations.¹¹⁹ Accordingly, to create a Space Force consistent with the scope of the Trump administration's ambitions, the executive options put forth so far should serve only as fallback options if Congress rejects the more expansive vision for a Space Force.

B. *Space Force Proposals*

Proponents for a Space Force do not allege that U.S. space capabilities are nonexistent.¹²⁰ Rather, critics argue that the diffusion of these resources throughout the U.S. Armed Forces cause them to be systematically overlooked and underfunded.¹²¹ There are sixty different space systems and assets spread throughout the Department of Defense without any unifying or controlling body.¹²² While nearly 90 percent of the military's current space portfolio exists under the dominion of the Air Force, these resources are housed within all five services and several civilian agencies.¹²³ To some, the military's lack of organizational unity for military space assets is symbolic of its low priority status, exemplified by the Air Force's past failures to prioritize its space budget.¹²⁴ This systemic neglect has resulted in the U.S. falling six to eight years behind its peers and rival nations, such as Russia and China, in space-based military capabilities.¹²⁵ All of the following proposals seek to remedy the neglect of U.S. space power with organizational solutions of various extents and degrees.

1. *Consolidation of Existing Space Resources*

The President has executive power to reorganize DOD resources and direct the service secretaries to develop new units and provide for greater capabilities in already-existing space components.¹²⁶ Using purely executive authorities, the President has already acted to consolidate some of the space-based assets scattered around the service branches and implement precursor structures for an independent branch.¹²⁷ Consistent with this mission, the Pentagon also green lit internal initiatives like the Space Operations Force and the Space Development

¹¹⁹ See HILDRETH ET AL., *supra* note 101, at 1.

¹²⁰ See DEP'T OF DEF., *supra* note 5, at 9 ("Today all five Military branches possess space expertise, but this space cadre is a small percentage of the total force.").

¹²¹ See HILDRETH ET AL., *supra* note 101, at 1 ("[F]ragmentation and overlap in national security space acquisition management and oversight have contributed to program delays and cancellations, cost increases, and inefficient operations.").

¹²² Venable, *supra* note 4.

¹²³ Stockton, *supra* note 4.

¹²⁴ See *id.* (explaining that "the Air Force's space power investments have not increased since 2013, while its overall spending has climbed 30 percent" in the same time frame).

¹²⁵ See *id.*

¹²⁶ HILDRETH ET AL., *supra* note 101, at 1.

¹²⁷ See DEP'T OF DEF., *supra* note 5, at 3.

Agency, as well as the beginnings of an operating structure and civilian oversight body for the forthcoming Space Force.¹²⁸

However, the presidential power over the functioning of the DOD is not absolute. Unsurprisingly, several Air Force leaders have spoken out in opposition to moving space-based assets out from under their authority.¹²⁹ Swayed by this dissent, Congress could insist on codifying these changes, or influence countervailing executive branch action through its oversight and appropriation powers.¹³⁰ Similarly, it follows that if purely executive authorities could prompt such change, a future presidential administration could just as easily undo this reorganizational progress.

2. Creation of a Unified Combatant Command

Another option that takes an even larger step towards an independent branch would be to restructure the military's space-based assets into a Unified Combatant Command.¹³¹ Under Title 10, the President has the discretion to organize military force within the existing structure of the Department of Defense.¹³² In particular, the President has the authority and discretion under 10 U.S.C. § 161 to direct the establishment of combatant commands.¹³³

On December 18, 2018, President Trump exercised this power and directed the Secretary of Defense to establish the U.S. Space Command as the 11th Unified Combatant Command.¹³⁴ As part of its fiscal year 2019 defense appropriations, Congress had tasked the Secretary of Defense to establish Space

¹²⁸ *Id.* at 4.

¹²⁹ See, e.g., Lara Seligman, *Trump Considers Firing Air Force Chief Over Space Force Pushback*, FOREIGN POLICY (Oct. 4, 2018), <https://foreignpolicy.com/2018/10/04/trump-considers-ousting-air-force-head-over-space-force-pushback/> [<https://perma.cc/6VR3-VE23>].

¹³⁰ See *supra* note 112 and accompanying text.

¹³¹ A leaked Pentagon report showed that a Space Force would absorb components from a cross section of other branches, including the Naval Satellite Operations Center, the Navy's Space and Naval Warfare Systems Command, parts of Air Force Space Command, and the Army's 1st Space Brigade. DEP'T OF DEF., INTERIM REPORT ON ORGANIZATIONAL AND MANAGEMENT STRUCTURE FOR THE NATIONAL SECURITY SPACE COMPONENTS OF THE DEPARTMENT OF DEFENSE 6 (2018)§§§; Marcus Weisgerber, *Pentagon May Create a Combatant Command for Space*, DEFENSE ONE (Mar. 6, 2018), <https://www.defenseone.com/technology/2018/03/pentagon-may-create-combatant-command-space/146430/> [<https://perma.cc/H8EE-63R3>].

¹³² See *The Origins of the Marine Corps*, *supra* note 115.

¹³³ 10 U.S.C. § 161(a) (2012); see Oriana Pawlyk, *Key Space Force Directive Missing from White House Meeting Agenda*, MILITARY.COM (Oct. 18, 2018), <https://www.military.com/daily-news/2018/10/18/key-space-force-directive-missing-white-house-meeting-agenda.html> [<https://perma.cc/JBV2-R6JZ>].

¹³⁴ Establishment of United States Space Command as a Unified Combatant Command, 83 Fed. Reg. 65,483 (Dec. 18, 2018).

Command as a subordinate to U.S. Strategic Command,¹³⁵ but Trump's order prompted the establishment of Space Command as a more expansive Unified Combatant Command (on par with U.S. Strategic Command).¹³⁶ Despite this step forward, the Trump Administration was unsatisfied, arguing that the Space Command merely complements its ultimate Space Force plans.¹³⁷ This Space Command presents an interim measure that the White House hopes will be folded into an eventual independent space branch.¹³⁸

However, even this statutory action does not insulate a Space Force from later Congressional or Presidential rejection. Congress can easily create or abolish Combatant Commands by amending Title 10.¹³⁹ Congress could also impose additional regulations on the new Space Command, as it did with the U.S. Cyber Command.¹⁴⁰ As a creature of pure executive authority, combatant commands also lack the permanence of a service or branch. In fact, a U.S. Space Command once existed but was dissolved into U.S. Strategic Command in 2002 during defense reorganization following the terrorist attacks of September 11, 2001.¹⁴¹

3. *Space Policy Directive-4 a.k.a. the Space "Corps" Model*

After months of uncertainty, the proposal entitled Space Policy Directive-4 appears to have won out as the compromise plan between the Pentagon and the original White House position. While several defense and White House administration officials said this meets the "intent of a sixth branch," the proposal would have substantial steps to becoming a "co-equal" branch; if implemented, the proposal would give the service chief of the new "Space Corps" a seat on the JCS, but would still have its administration and acquisition procedures governed by the bureaucratic staff of the Air Force.¹⁴² The Space Corps would have a small footprint with no control over its own budget, training

¹³⁵ Jacqueline Klimas, *Trump Re-Establishes U.S. Space Command*, POLITICO (Dec. 18, 2018), <https://www.politico.com/story/2018/12/18/white-house-establishes-us-space-command-1038139> [<https://perma.cc/DW3Q-C3ZJ>]; see also National Defense Authorization Act for Fiscal Year 2019, *supra* note 7, § 1601.

¹³⁶ Sandra Erwin, *President Trump Issues Order to Create U.S. Space Command*, SPACENEWS (Dec. 18, 2018), <https://spacenews.com/president-trump-issues-order-to-create-u-s-space-command/> [<https://perma.cc/PLW7-DMV3>].

¹³⁷ *Id.*

¹³⁸ Klimas, *supra* note 135.

¹³⁹ See Rudesill, *supra* note 107, at 473 (discussing creation and subsequent regulation of U.S. Cybercommand by Congress). For more on the analogous creation of the U.S. Cyber Command, see generally David G. Delaney, *Cybersecurity and the Administrative National Security State: Framing the Issues for Federal Legislation*, 40 J. LEGIS. 251 (2013).

¹⁴⁰ Rudesill, *supra* note 107, at 473.

¹⁴¹ Gary Shugart, *Re-Establishing U.S. Space Command*, PURVIEW (Oct. 1, 2018), <https://purview.dodlive.mil/2018/10/01/reestablishing-u-s-space-command/> [<https://perma.cc/EW3X-PMR8>].

¹⁴² Directive-4, *supra* note 7; Bender & O'Brien, *supra* note 99.

facilities, or bases.¹⁴³ The questions of rank, uniforms, and service academy remain unclear.¹⁴⁴

The appeal of this proposal undoubtedly lies in its political palatability. In September, legislators balked when Air Force Secretary Heather Wilson proposed a \$13 billion price tag for the Space Force.¹⁴⁵ By gradually absorbing Air Force assets and sharing the Air Force's civilian bureaucracy, this Space Corps option substantially limits the cost of a Space Force.¹⁴⁶ As currently envisioned, the Space Force would start with \$270 million in fiscal year 2020 and then scale up gradually to the tune of \$2 billion over 5 years, absorbing \$8 billion worth of space programs and personnel currently in the Air Force budget.¹⁴⁷ Nevertheless, this compromise proposal faces no easy path through Congress, and some powerful members of Congress, including the Chairman of the House Armed Services Committee, have publicly expressed their opposition.¹⁴⁸

4. *The Original Proposal a.k.a. the Space "Force" Model*

President Trump and Vice President Pence initially advocated for an even further-reaching proposal that would have marked the first creation of a new military branch since the creation of the Air Force in 1947.¹⁴⁹ Under this approach, the Space Force would have its own civilian military department and exist as an entirely co-equal branch to the Army, Navy, and Air Force.¹⁵⁰ Unlike any of the other proposals, this approach has the Space Force entirely

¹⁴³ Bender & O'Brien, *supra* note 99.

¹⁴⁴ Mike Gruss & Aaron Mehta, *Space Force to Cost \$2 Billion, Include 15,000 Personnel in First Five Years*, DEFENSENEWS (Mar. 1, 2019), <https://www.defensenews.com/space/2019/03/01/space-force-to-cost-2-billion-include-15000-personnel-in-first-five-years/> [https://perma.cc/4K4R-HQ9Z].

¹⁴⁵ *Id.*

¹⁴⁶ See Sandra Erwin, *Pentagon to Propose a Lean Space Force*, SPACENEWS (Feb. 14, 2019), <https://spacenews.com/pentagon-to-propose-a-lean-space-force/> [https://perma.cc/762J-SPYV].

¹⁴⁷ *Id.*; Gruss & Mehta, *supra* note 144 ("An executive summary of the legislative proposal stresses that the \$2 billion represents 'less than 0.05 percent' of the Pentagon's expected budget during that five-year period, and adds that 'more than 95 percent of the Space Force annual budget is estimated to consist of resources that will have been transferred from existing DoD budget accounts.'").

¹⁴⁸ Joe Gould, *House Armed Services to Give Trump's Space Force a Makeover*, DEFENSENEWS (Mar. 13, 2019), <https://www.defensenews.com/space/2019/03/13/house-democrats-to-give-trumps-space-force-a-makeover/> [https://perma.cc/BY6F-XS24] ("[Representative Adam] Smith said he would work with a bipartisan collection of colleagues on an alternative to the administration's [Space Force] proposal overall.").

¹⁴⁹ Klimas, *supra* note 9; see also Interview by Politico with Mike Pence, Vice President of the United States, in Washington, D.C. (Sept. 24, 2018), <https://www.politico.com/live-events/2018/10/30/playbook-interview-with-mike-pence-843091> [https://perma.cc/UP2Y-YJN8].

¹⁵⁰ Klimas, *supra* note 97.

independent of control by other branches: the Space Force would manage its own training, logistics, and acquisition processes.¹⁵¹ While the scope of this new branch would indeed be broad, advocates have indicated no intent to subsume NASA or any other civilian agencies with a role in space.¹⁵²

This plan of action has faced fierce pushback from Congress and even the Pentagon itself over the cost of creating additional independent space bureaucracy.¹⁵³ Critics argue that an entire new civilian department would needlessly duplicate existing Air Force bureaucratic functions and impose needless overhead on the fledgling branch.¹⁵⁴ However, regardless of whether the Space Corps plan or another less expansive plan prevails, Trump's ultimate goal remains this option: an independent co-equal branch.¹⁵⁵ Importantly, no one believes the Space Force will be established in one fell swoop: both the scope and finer details of the Space Force will be the subject of continued debate in successive fiscal year appropriations bills.¹⁵⁶

IV. THE VALUES AND LESSONS OF GOLDWATER-NICHOLS SUPPORT AN INDEPENDENT AND CO-EQUAL SPACE FORCE

Notwithstanding some calls for updates to the legislation,¹⁵⁷ the Goldwater-Nichols Defense Reorganization Act remains the law of the land when discussing defense organization. The virtues embodied in the Act should serve as a guide for weighing the competing policy tensions surrounding the current Space Force debate. Proponents for a Space Force can also glean important lessons from the political battle for Goldwater-Nichols, which presages some of the legislative hurdles ahead for an independent Space Force.

Formally, Goldwater-Nichols states eight objectives of the legislation unequivocally at the beginning of the Act.¹⁵⁸ From these objectives and the

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *See infra* Part IV.C.

¹⁵⁴ *See infra* Part IV.A.

¹⁵⁵ The Trump administration foresees scaling up to this model in a potential second term, after lawmakers have lived with the old model for a few years. Klimas, *supra* note 97.

¹⁵⁶ *See* Gruss & Mehta, *supra* note 144.

¹⁵⁷ *See supra* notes 91–92 and accompanying text.

¹⁵⁸ Goldwater-Nichols Department of Defense Reorganization Act of 1986, *supra* note 11, § 3 (“[1] To reorganize the Department of Defense and strengthen civilian authority in the Department of Defense; [2] to improve the military advice provided to the President, the National Security Council, and the Secretary of Defense; [3] to place clear responsibility on the commanders of the unified and specified combatant commands for the accomplishment of missions assigned to those commands; [4] to ensure that the authority of those commanders is fully commensurate with [that] responsibility . . . [5] to increase attention to the formulation of strategy and to contingency planning, [6] to provide for more efficient use of defense resources; [7] to improve joint officer management policies; and [8] otherwise to enhance the effectiveness of military operations and improve the management and administration of the Department of Defense.”).

history of Goldwater-Nichols, I surmise three noteworthy themes with particular applicability to the Space Force: (1) organizational clarity and clear responsibilities, (2) enhanced civilian authority, and (3) ending service parochialism. Taken as a whole, these themes support an independent co-equal Space Force as superior to the other options considered.¹⁵⁹

A. Organizational Clarity and Clear Responsibilities

The stark reality is that “[the U.S.] military now is completely dependent on space.”¹⁶⁰ Yet, space is “not getting the attention it deserves.”¹⁶¹ As far back as 2001, a Pentagon commission acknowledged: “National security space organization and management today fail to reflect the growing importance of space to U.S. interests.”¹⁶² Organizational confusion has resulted in neglect of space national security and risked U.S. interests in this crucial domain.¹⁶³ While the other proposals offer improvements on the status quo by raising the profile of space warfighting, budgetary concerns should not prevent Congress from achieving optimal organizational clarity in a separate civilian branch.

In response to service dysfunction, Goldwater-Nichols sought to streamline the military command structure to facilitate effective governance, while still retaining a robust pluralistic decision-making process.¹⁶⁴ The regime preceding Goldwater-Nichols suffered from a dearth of clear responsibility, with widespread uncertainty in the duties of many major defense leaders.¹⁶⁵ Were service secretaries subject to the direct authority of the Defense Secretary?¹⁶⁶ Was a service chief’s primary duty to his or her own branch or the JCS?¹⁶⁷ Should the service chiefs primarily focus on “hotel” functions or warfighting functions?¹⁶⁸ When joint operations were conducted who would lead?¹⁶⁹

¹⁵⁹ See *supra* Part III.

¹⁶⁰ Russell Berman, *Does the U.S. Military Need a Space Corps?*, ATLANTIC (Aug. 8, 2017), <https://www.theatlantic.com/politics/archive/2017/08/military-space-corps/536124/> [<https://perma.cc/7C2Y-MQ7J>] (quoting Todd Harrison, Director, Aerospace Security Project at the Center for Strategic International Studies: “We can’t fight without fighting through space. When we put a bomb on a target somewhere in the world . . . [T]he bomb would not have gotten there without our space capabilities.”).

¹⁶¹ *Id.* (quoting U.S. Representative Jim Cooper).

¹⁶² DEP’T OF DEF., *supra* note 3, at 79.

¹⁶³ See *supra* Part III.A (discussing criticism of the current state of space national security).

¹⁶⁴ See LEDERMAN, *supra* note 12, at 110.

¹⁶⁵ See *supra* Part II.B.

¹⁶⁶ See *supra* note 76 and accompanying text.

¹⁶⁷ See *supra* notes 52–53 and accompanying text.

¹⁶⁸ See *supra* notes 77–79 and accompanying text.

¹⁶⁹ See, e.g., *supra* note 58 and accompanying text.

Conducting military affairs without clear answers to these questions led directly to military disasters, such as Grenada and Beirut.¹⁷⁰

Now, Congress has the opportunity to correct the analogous disunity in space military assets before the U.S. faces a similar military disaster, or an even worse “Space Pearl Harbor.”¹⁷¹ While the context of organizational confusion differs slightly in the Space Force context, the virtues of Goldwater-Nichols remain instructive. Confused responsibilities and lack of unified control have undeniably hampered the creation of space national security.¹⁷² But under Space Policy Directive-4 and the other proposals, many space-based responsibilities would remain scattered throughout the branches.¹⁷³ Without its own civilian secretary and complete autonomy over acquisition, space warfighting will remain a “technological tower of Babel” without clear leadership in space strategy development.¹⁷⁴

The unique nature of organizational issues in the space context calls for a separate civilian military *a fortiori* because the successful administration of the Space Force will turn on technology acquisition more so than conducting missions.¹⁷⁵ Responding to widespread waste, fraud, and abuse in the acquisition of military equipment, Goldwater-Nichols saw the importance of efficiency acquisition and accordingly vested each service secretary with sole responsibility over acquisition.¹⁷⁶ Yet under Space Policy Directive-4 and the other executive options, the Air Force Secretary, rather than the Space Force itself, would have control over the space equipment acquisition process.¹⁷⁷ Although reorganizing the Space Force into a combatant command or a branch under the Air Force may provide the advantage of having all warfighting capacities under one chain of command, such a Space Force will not have its interests equivalently represented on the acquisition front. A Space Force service secretary would ensure that the Space Force could set its own budget, rather than risk further budgetary mismanagement by the Air Force.¹⁷⁸ Optimal organizational clarity and clearly defined role responsibilities can be achieved

¹⁷⁰ See NEMFAKOS ET AL., *supra* note 37, at 9 (describing Grenada, Lebanon, the Iranian Hostage Rescue, and other failed U.S. military operations: “These shortcomings were symptoms of structural problems that had been festering for decades.”).

¹⁷¹ See DEP’T OF DEF., *supra* note 3, at viii.

¹⁷² Venable, *supra* note 4 (“Equipping America’s military for space operations has been a challenge for several decades due to the fragmentation and overlap in the six different organizations that manage requirements, and eight others that deal with acquisition. On top of that, no one is in charge of either process, and the associated dysfunction has contributed to program delays, cost increases, and even cancellations.”).

¹⁷³ See *id.*

¹⁷⁴ See LEDERMAN, *supra* note 12, at 110 (warning of the potential pitfalls faced by a 21st century military under the Goldwater-Nichols regime).

¹⁷⁵ Stockton, *supra* note 4.

¹⁷⁶ See NEMFAKOS ET AL., *supra* note 37, at 15–16.

¹⁷⁷ Directive-4, *supra* note 7.

¹⁷⁸ See *supra* Part II.B (noting the Air Force’s lack of prioritization of its space budget).

only by consolidating all functions into one, civilian accountable, independent branch.

The most often cited rejoinder to the independent Space Force model with a separate civilian department model is that it would increase the size the Pentagon bureaucracy, thereby reducing efficiency and increasing costs unnecessarily.¹⁷⁹ These arguments appear less persuasive when compared to the military's experience with Goldwater-Nichols. From an operational perspective, military efficacy would not suffer, because Goldwater-Nichols already vests the JCS Chairman with power to override dissenting JCS opinions.¹⁸⁰ From an efficiency perspective, the exact same "too much bureaucracy" arguments were made by reform opponents during Goldwater-Nichols to oppose decentralization, yet Goldwater-Nichols has been credited as a success in rooting out systemic inefficiency.¹⁸¹

While cost was less of a hot button issue in the Goldwater-Nichols legislative process, cost should still not be a dispositive factor in the Space Force debate.¹⁸² Even the highest projected price tag—\$13 billion¹⁸³—appears small when contextualized against the \$350 billion of U.S. space-dependent commerce at risk by Chinese and Russian anti-satellite technology,¹⁸⁴ and even smaller when compared to the overall annual defense budget of nearly \$717 billion.¹⁸⁵ The Space Force would also be able to absorb a portion of the Air

¹⁷⁹ See, e.g., Berman, *supra* note 160 (citing comments by Air Force Secretary Heather Wilson opposing the Space Force on grounds that it would increase bureaucracy); Michael Ramirez, *Cartoon: Space Force*, LAS VEGAS REV. J. (Oct. 31, 2018), <https://www.reviewjournal.com/opinion/michael-ramirez/cartoon-the-space-force-1516023/> [<https://perma.cc/9S2R-VACW>] (depicting the U.S. Space Force with the caption, "[t]o boldly expand bureaucracy where no man has gone before").

¹⁸⁰ See *supra* notes 83–87 and accompanying text (describing Goldwater-Nichols JCS reform).

¹⁸¹ See, e.g., LOCHER, *supra* note 42, at 270–72, 400 (cataloguing complaints lobbied against Goldwater-Nichols by its anti-reform opponents, which mirror modern critiques of the Space Force proposal, by attacking Goldwater-Nichols as an unwarranted increase in Pentagon bureaucracy and cost).

¹⁸² LEDERMAN, *supra* note 12, at 48–49 (contextualizing Goldwater-Nichols as "crystalliz[ing] in the 1980s without major fiscal pressure . . . in the midst of President Reagan's trillion-dollar military build up").

¹⁸³ Sandra Erwin, *Air Force Secretary Heather Wilson's Space Force Proposal Has People Buzzing*, SPACENEWS (Sept. 18, 2018), <https://spacenews.com/air-force-secretary-heather-wilsons-space-force-proposal-has-people-buzzing/> [<https://perma.cc/DZG6-4XU3>]. There may even be reason to doubt this estimated budget, as some have alleged that the Air Force (who supplied the budget forecasts) made the budget intentionally duplicative and cost-inefficient in an attempt to discourage moving forward with the Space Force. *Id.*

¹⁸⁴ Stockton, *supra* note 4.

¹⁸⁵ Leo Shane III, *Congress Finalizes \$717 Billion Defense Budget Authorization Months Ahead of Schedule*, MILITARYTIMES.COM (Aug. 1, 2018), <https://www.militarytimes.com/news/pentagon-congress/2018/08/01/congress-finalizes-defense-budget-authorization-months-ahead-of-schedule/> [<https://perma.cc/2DAB-X8XM>].

Force's budget and assets, meaning that this cost increase would be a relative increase, not an absolute one.¹⁸⁶ At bottom, even if cost is very high, space strategy is unlikely to meaningfully develop without a significant allocation of attention and resources.

B. *Enhanced Civilian Control*

Inferior military advice provided to civilian decision makers, caused by "inter-service logrolling," was a contributing cause to the military operational failures leading up to the passage of Goldwater-Nichols.¹⁸⁷ In light of the importance of space in the future of national security, the Space Force should be its own completely independent branch to provide the best possible military advice to the Commander in Chief. If the Space Force remains a subordinate branch to the Air Force, there is no guarantee that space interests will be represented to a degree corresponding with their increasing importance.¹⁸⁸ A separate civilian department will ensure that space interests are adequately represented, increased civilian control and accountability over those resources, and an increase in the quality of joint advice directed to the Commander in Chief. However, in light of the story of Goldwater-Nichols, it appears clear that persuading civilian authorities of the need for such changes will require a substantial legislative effort.

In one way, the positive effects on civilian control created by a co-equal Space Force branch are obvious. For example, under a Space Force model, components can directly interface with civilian authorities without impediment by the Air Force Secretary or any other intermediary.¹⁸⁹ A direct line of communication from the Space Force to the President and Congress allows those government actors to vindicate space-related national security priorities directly, without losing the force of such directives in a trickle down military bureaucracy.¹⁹⁰ Similarly, a dedicated Space Force Secretary allows the Space Force to better vindicate its own policy interests or resource needs requiring

¹⁸⁶ See Venable, *supra* note 4.

¹⁸⁷ LOCHER, *supra* note 42, at 438.

¹⁸⁸ See *supra* Part III.B.3 (describing Space Policy Directive-4).

¹⁸⁹ The civilian service secretaries regularly testify before and interface with Congress, especially in the context of seeking appropriations. See, e.g., Charles Pope, *Air Force Secretary Wilson, Gen. Goldfein Outline Service's Priorities, Aspirations to Senate Subcommittee*, U.S. AIR FORCE (Mar. 13, 2019), <https://www.af.mil/News/Article-Display/Article/1784659/air-force-secretary-wilson-gen-goldfein-outline-services-priorities-aspirations/> [<https://perma.cc/AKB3-B2AH>].

¹⁹⁰ Adding a service chief to the Joint Chiefs of Staff in order to increase the focus on their views would not be unprecedented. National Guard members felt that their interests were being ignored by the JCS, so in 2012, despite pushback from the JCS, Congress agreed that statutory membership in the JCS for the Chief of the National Guard Bureau was necessary to guarantee a seat at the table for the interests of the domestic mission of the National Guard. See OFFICE OF THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF, *supra* note 48, at 79–80.

legislative attention, by directly lobbying Congress and powerbrokers within the DOD.¹⁹¹ Under Space Policy Directive-4 and the other plans, such space interests could be subordinated to Air Force needs without direct recourse.

On the other hand, a less obvious benefit of creating an independent Space Force is that military decentralization inherently promotes accountability and civilian control.¹⁹² Decentralization enhances control by civilian authorities, who can reward branches with more resources for faithful adherence to civilian-set policy.¹⁹³ Also, the Senate Armed Services Committee has direct jurisdiction over the military departments and could regularly exercise its oversight power over the proposed Space Department.¹⁹⁴ Moreover, some have expressed concern with the gradual erosion of civilian control of the military, blaming the “jointness” that Goldwater-Nichols promoted as having created services as a unified bloc of power diametrically opposed to the restraining influences of civilian governance.¹⁹⁵ Creating an even more powerful Air Force by giving it formalized control over a growing portfolio of space assets could further exacerbate these civilian control problems.

Despite the compelling arguments for an independent Space Force, the Space Force will likely face an uphill battle in convincing civilian authorities that improvements in civilian control justify upending the status quo. Because of the Pentagon’s past military victories in most major conflicts, it suffers from a “failure of success,” which makes it often unwilling to embrace organizational innovations.¹⁹⁶ It took the public failures in Panama, Beirut, and Grenada to garner the political will to ultimately succeed in passing the Goldwater-Nichols Act.¹⁹⁷ No similarly high-profile event has occurred to overcome the political apathy surrounding the Space Force.

Further, Goldwater-Nichols benefited from support by a bipartisan coalition led by high-profile and popular Congressmen Barry Goldwater, Sam Nunn, and Bill Nichols.¹⁹⁸ Such a bipartisan effort may not be feasible in the bitterly divided politics of today, especially with evidence that the Space Force has become a highly partisan issue.¹⁹⁹ Whereas Goldwater and Nunn’s success

¹⁹¹ Cf. LEDERMAN, *supra* note 12, at 73 (describing how the Naval Department and the Naval Secretary established direct lines of communication to lobby Congress in the Goldwater-Nichols context).

¹⁹² John Yoo, *Administration of War*, 58 DUKE L.J. 2277, 2304 (2009).

¹⁹³ *Id.*

¹⁹⁴ See STANDING RULES OF THE SENATE, *supra* note 110, at 20 (Rule XXV); RULES OF THE HOUSE OF REPRESENTATIVES, *supra* note 110, R. X, DOC. NO. 115-117, at 445.

¹⁹⁵ Dunlap, *supra* note 106, at 372.

¹⁹⁶ LOCHER, *supra* note 42, at 448.

¹⁹⁷ See NEMFAKOS ET AL., *supra* note 37, at 9.

¹⁹⁸ LOCHER, *supra* note 42, at 213–14, 232–33.

¹⁹⁹ Jeff Cirillo, *Space Force: Trump Drives New Partisan Split over Old Issue*, ROLL CALL (Aug. 15, 2018), <https://www.rollcall.com/news/politics/space-force-trump-drives-new-partisan-split-old-issue> [https://perma.cc/9AAZ-MCDJ] (discussing a survey of 1,500 American adults which showed that 69 percent of Democrats opposed the creation of a Space Force, while 68 percent of Republicans supported it).

turned on a deliberate campaign of persuasion and impassioned speeches from the Senate floor in favor of reorganization,²⁰⁰ no clear legislative champion has yet emerged to promote the need for an independent Space Force.²⁰¹ Thus in the absence of such legislative advantages, the lessons of Goldwater-Nichols should serve as an especially important historical example of the benefits of reorganization within the military.

C. Ending Service Parochialism

Without the autonomy stemming from an independent branch, space national security could suffer from the same inter-service turf wars that proved so counterproductive before Goldwater-Nichols.²⁰² Goldwater-Nichols sought to reduce inter-branch competition where the “needs and interests of the individual military services were being prioritized over joint mission requirements.”²⁰³ Before Goldwater-Nichols reform, any JCS member could exercise a de facto veto over military operations, which hampered a cohesive military structure.²⁰⁴ Under Space Policy Directive-4 and the other proposals, many space-related resources and functions would remain spread among the other branches, preserving that de facto veto and chaotic fragmentation.²⁰⁵ Only by removing incentives to act in each branch’s self-interest, and wresting developing technology free from entrenched interests, did military power eventually work together more cohesively and effectively.²⁰⁶

However, perhaps motivated by resource competition and an unwillingness to cede its dominance over space,²⁰⁷ the Air Force has already firmly asserted its parochial interests in the realm of space by publicly opposing plans for a Space Force.²⁰⁸ Some have accused the Air Force of “poisoning the well” by

²⁰⁰ LOCHER, *supra* note 42, at 321, 325.

²⁰¹ See Kheel, *supra* note 112. At least no clear legislative champion has emerged in the Senate, where the battle is likely to be fiercer. Representatives Mike Rogers of Alabama and Jim Cooper of Tennessee have been considered vocal advocates in the House of Representatives. *Id.*

²⁰² See *supra* Part II.B.

²⁰³ GOLDWATER-NICHOLS CRS REPORT, *supra* note 43, at 2.

²⁰⁴ *Id.* at 7.

²⁰⁵ See Bender & O’Brien, *supra* note 99.

²⁰⁶ See Seligman, *supra* note 129; c.f. Sandra Erwin, *Air Force Secretary Lays Roadmap to a New Space Force*, SPACENEWS (Sept. 17, 2018), <https://spacenews.com/air-force-secretary-lays-roadmap-to-a-new-space-force/> [https://perma.cc/3F57-8QSE] (describing a proposal from Air Force Secretary Heather Wilson that would spread control of a space force through a Space Force Development Agency, the Air Force, and the Navy).

²⁰⁷ See Seligman, *supra* note 129 (“The fight over the Space Force is part of a broader struggle for resources among the U.S. military services, as congressionally mandated defense spending caps are set to return next year.”).

²⁰⁸ Berman, *supra* note 160 (“‘The Pentagon is complicated enough,’ Air Force Secretary Heather Wilson told reporters . . . ‘This will make it more complex, add more boxes to the organization chart, and cost more money. If I had more money, I would put it into lethality, not bureaucracy.’”) (quoting *Air Force Opposes Creation of Space Corps*,

aggressively lobbying the Senate against the idea of a Space Force.²⁰⁹ Others have even accused the Air Force Secretary of conducting a secret effort to undermine the White House's Space Force proposals, including purposely inflating the cost estimates and requirements to discourage Congress from "embark[ing] on a politically fraught effort" to create an independent Space Force.²¹⁰

However, when viewed in the context of Goldwater-Nichols and its predecessors, this opposition by entrenched service interests looks entirely natural, and may actually support the creation of an independent Space Force. The Air Force's vehement opposition to the creation of a new branch within its area of perceived dominance has several historical analogues, both during and prior to Goldwater-Nichols, which demonstrate how Congress must initially overcome parochial service resistance to advance the long-term development of military functionality.

In many ways, the Air Force's opposition to an independent branch is analogous to the Navy's opposition to Goldwater-Nichols reform.²¹¹ Despite its eventual resounding legislative success, passage of the Goldwater-Nichols Act was not universally welcomed. Service chiefs from every branch, but especially the Navy,²¹² came out strongly against any attempt at significant defense reforms like Goldwater-Nichols.²¹³ The Navy's strong tradition of independence and decentralized command made it a particularly vehement opponent of Goldwater-Nichols, a reform effort it believed likely to compromise

ROLL CALL (June 22, 2017), <https://www.rollcall.com/policy/air-force-opposes-creation-space-corps> [<https://perma.cc/GBF8-ZSPK>]; see also Koren, *supra* note 8 (discussing a past legislative effort to stand up a space corps: "The Air Force hated the idea, saying that such a stand-alone division would only add more bureaucracy to an agency already crisscrossed with red tape. Congressional leaders listened to defense officials and rejected the legislation.").

²⁰⁹ Kheel, *supra* note 112 (quoting Representative Mike Rogers of Alabama).

²¹⁰ See Erwin, *supra* note 206.

²¹¹ Compare the modern observations from political commentators on the Air Force's efforts to derail the Space Force *supra* notes 205–08 and accompanying text, with a contemporaneous Congressional observers comment on the Navy's coordinated influence campaign on Capitol Hill against Goldwater-Nichols: "The Navy has been dead set against this legislation. [Naval Secretary] Lehman has been up here doing everything he can to undo it." JEFFREY W. DONNITHORNE, *FOUR GUARDIANS: A PRINCIPLED AGENT VIEW OF AMERICAN CIVIL-MILITARY RELATIONS* 203 (2018).

²¹² LEDERMAN, *supra* note 12, at 73–74 ("Opponents of reorganization were led by Secretary of the Navy Lehman and Senator John Warner (R-VA), a former secretary of the navy whose state of Virginia contained large naval bases."); see also LOCHER, *supra* note 42, at 70–71, 78, 164, 171, 231, 252, 431 (recounting examples of Navy opposition to Goldwater-Nichols).

²¹³ Military historian James Locher III calls the service chiefs in the early 1980s "service supremacists" who "wielded their influence more to protect their independence and prerogatives than to develop multiservice commands capable of waging modern warfare. They also blunted efforts to make their separate forces, weapons, and systems interoperable." LOCHER, *supra* note 42, at 15.

its historical independence.²¹⁴ Compared to “trench warfare,” the legislative fight for Goldwater-Nichols against anti-reform interests in the military was fierce.²¹⁵ Congress had to overcome the service chiefs who used their platform and influence to vocally advocate for the maintenance of the status quo and successfully convinced some legislators to oppose reform.²¹⁶ Even the civilian authorities in the Pentagon had initially favored weak internal management initiatives to correct the organizational problems Congress had identified.²¹⁷ Fortunately, emboldened by the debacles in Grenada and Beirut, Congress defeated the parochial Pentagon and military interests to achieve necessary lasting change.²¹⁸

This theme of service chief opposition to decentralization predates even Goldwater-Nichols. Ironically, the creation of the modern Air Force itself was vehemently opposed by existing service interests. Fearful of the threat the Air Force posed to their dominance, the Navy and Marine Corps were “dragged kicking and screaming” into the independent Air Force regime created by the National Security Act.²¹⁹ Some argue that the Army Air Corps was an example of a service that went independent too early and suffered setbacks in the form of dangerous planes that put service members at risk.²²⁰ While space warfighting strategy is in its nascent stages, the example of the Army Air Corps actually shows that it was only through the dedication of resources that strategy and technology developed to create the powerful Air Force that would emerge in World War II.²²¹ No one seriously questions the need for an Air Force now. So when modern Air Force interests argue that the space strategy is too undeveloped to warrant its own branch and should remain under the Air Force,²²² the branch’s own history instructs otherwise on this point. Moreover,

²¹⁴ See LEDERMAN, *supra* note 12, at 8–9.

²¹⁵ LOCHER, *supra* note 42, at 320.

²¹⁶ See *id.* at 186–87, 190–91 (discussing the opposition of Texas Senator John Tower, chairman of House-Senate conference on the bill).

²¹⁷ *Id.* at 103.

²¹⁸ *Id.* at 127.

²¹⁹ *Id.* at 265; see also Eckhardt, *supra* note 47, at 438; OFFICE OF THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF, *supra* note 48, at 16–19; LEDERMAN, *supra* note 12, at 16–17.

²²⁰ Deptula, *supra* note 6.

²²¹ MICHAEL C. WHITTINGTON, MAXWELL PAPER NO. 20, A SEPARATE SPACE FORCE: AN 80-YEAR-OLD ARGUMENT 10 (2000).

²²² Other than bureaucratic and cost complaints, opposition to the concept of a Space Force often revolves around allegations that space strategy is not sufficiently developed to warrant its own branch. See, e.g., Michael Martindale & David A. Deptula, *Organizing Spacepower: Conditions for Creating a US Space Force*, 16 MITCHELL INST. POL’Y PAPERS 1, 8 (2018) (describing the five conditions necessary for the creation of an independent Space Force and how the proposed Space Force has only met two conditions); Sandra Erwin, *Experts: A Separate Military Service for Space May Be Too Much Too Soon*, SPACENEWS (Sept. 10, 2018), <https://spacenews.com/experts-a-separate-military-service-for-space-may-be-too-much-too-soon/> [<https://perma.cc/AS6Q-XXA3>] (discussing how the only mission of the space force is the “broad mission of speeding up innovation”).

while flight technology was in its infancy at the establishment of the Air Force, space technology is already regularly in use in military operations.²²³

The military establishment's opposition to new technology and strategic innovation goes back even further than the Air Force. United States military thinkers in the late nineteenth century initially rejected even the development of naval power.²²⁴ In 1890, Navy officer Alfred Thayer Mahan wrote the seminal book, *The Influence of Sea Power Upon History*, to urge the United States to invest in a strong navy.²²⁵ Mahan's book successfully changed the public perception of naval power and encouraged investment in a strong navy, by arguing that sea power allows nations to control and protect "lines of communication" from other nations.²²⁶ Now, many years later, no one seriously questions the need for U.S. naval power. As the world expands into the final frontier, the Space Force's chief mission would be built around an analogous mission of protecting the crucial telecommunications infrastructure the U.S. keeps in space.²²⁷

In sum, recounting the stories of historical opposition to military innovation show that the mounting pressure on the Space Force from entrenched interests is not dispositive of the Space Force's actual importance or projected success. In fact, these stories show that many past doomsayers have been proven wrong by the effectiveness of each succeeding era of military organizational innovation. While the Navy and other branches were convinced that a host of problems would occur from Goldwater-Nichols, it is widely regarded as a success in conducting joint operations and improving the overall military success of the Armed Forces.²²⁸ In the case of the Space Force, wresting control of it from the Air Force and investing in its parity with other branches will best serve the long-term interests of the Armed Forces.

V. CONCLUSION

The debates over the Space Force mark a novel and complex chapter in the ongoing story of how best to organize military power in a democratic society. However, policymakers can follow the lead of similar defense reorganization efforts that preceded it. The lessons of the Goldwater-Nichols Act should play an important part in discerning which organizational remedies can correct widely acknowledged deficits in space national security. Without a doubt, any of the Space Force options proposed would be a step in the right direction by increasing the emphasis on developing space warfighting strategy. But in light

²²³ Stockton, *supra* note 4. For example, Air Force Space Command already exists. *See generally* AIR FORCE SPACE COMMAND, <https://www.afspc.af.mil/> [<https://perma.cc/A78J-NUEK>].

²²⁴ *See* Stockton, *supra* note 4.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *See supra* notes 87–90 and accompanying text.

of all the circumstances and lessons of the Goldwater-Nichols Act, an independent Space Force, separate and equal to the United States Air Force, offers the ideal structure for protecting America's ever more important interests in space.